

LOUISVILLE METRO COUNCIL COMMITTEE MINUTES

Special Health and Human Services Committee Meeting

Monday, January 7, 2008

1:00 P.M.

Third Floor, City Hall

Present:	Chair:	CM Woolridge
	Vice Chair:	CM Welch
	Members:	CM Tandy, CM Heiner and CM Engel

Also Present: **CM Flood, CM Henderson, CM Hamilton, CM Downard, CM Fleming, President Blackwell, CM Owen, CM King, CM Green, CM Butler, CM Shanklin**

Chairwoman Woolridge began the meeting by announcing the members and non-members of the committee that were present. A quorum was established.

Special Items For Discussion: NONE

AGENDA

[O-316-12-07 AN ORDINANCE AMENDING AND RE-ENACTING CHAPTER 90 OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES \[LMCO\] RELATING TO THE PROHIBITION OF SMOKING IN DESIGNATED AREAS.](#)

Status: On Council Agenda - New Business

Committee: Health & Human Services

Primary Sponsor: Rick Blackwell

Motion to Approve was made by David Tandy and seconded by Vicki Welch.

Handouts were given to the Committee Members ([attached](#))

Dr. Troutman, Director of Public Health and Wellness, spoke to the item stating there is no change in basic principle and strongly encouraged the Council to reenact this ordinance. The following was discussed:

- Fines
 - Fines collected will be held awaiting more clarity of the status of the ordinance
 - Percentage of collection rate on the fines - fairly low, lag between issuance of citations and payment
- Vast majority continue to abide by the ordinance

Dr. Troutman stated the he could get the information on fines collected later on today for the Committee.

Bill O'Brien, Assistant County Attorney also spoke to the item giving a brief history of the Court proceedings as follows:

- December 21, Judge Ryan entered order doing away with Ordinance, stating it was unconstitutional
- December 21, County Attorney's Office filed motion to stay the course of that action
- Today, County Attorney's Office presented a motion to vacate and amend Judge Ryan's order
 - Courts will have until the 21 of January, 2008, to reply

The current Ordinance is still in effect but no citations will be issued until the Council decides what kind and if there is going to be an ordinance.

The following was also discussed:

- What is the impact and who has the authority for decisions
 - Authority of the Health Department
 1. Responsible for enforcement from the Legislative Body
 2. Has jurisdiction for regulations regarding health issues
 3. Limited regarding fines

- 4. Can close a building down for non compliance
- 5. Severability
- 6. Fairness
 - Courts have ultimate authority
- A new ordinance would go into affect if one is amended and passed by the Council
- Health Department is responsible for citations for non compliance of the smoking ban
- Health Department does not have staff for complaints at night
- The ordinance would be less difficult to defend if there are no exemptions

The Ordinance itself was discussed.

Motion to Amend as follows was made by Hal Heiner and seconded by Robin Engel.

- **90.02 DEFINITIONS.**
 - **BUILDING.** Any structure enclosed from the weather, whether or not windows or doors are open, which is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has 80% or more of its perimeter closed in by walls or other non-porous coverings of any material, whether permanent or temporary. ~~If a person an establishment~~ leases or possesses only a portion of a building, the term "building" applies to the leasehold or possessory interest ~~as well.~~

The amendment passed.

VOTING RESULTS: For: 5; Against: 0; Abstain: 0; Absent: 0

For: David Tandy, Vicki Welch, Hal Heiner, Robin Engel, Mary C. Woolridge

Against: (None)

Abstain: (None)

Absent: (None)

Motion to Amend as follows was made by Hal Heiner and seconded by Robin Engel.

- **90.05 DUTIES OF OWNERS OF BUILDINGS AND/OR ESTABLISHMENTS.**
 - ~~(A) (3) Immediately contact the Louisville Metro Police Department, or any other law enforcement agency with jurisdiction, and request they remove the offending smoker from the premises if the smoker has refused to extinguish the smoking materials and refuses to leave.~~

The following was discussed:

- Too much pressure on police
- Placed in here to provide a protection for the establishment
- There is a record of the call
- Police can respond without being required to
- Issue of vagueness

CM Green is totally in favor of exempting tobacco companies.

The amendment passed.

VOTING RESULTS: For: 5; Against: 0; Abstain: 0; Absent: 0

For: David Tandy, Vicki Welch, Hal Heiner, Robin Engel, Mary C. Woolridge

Against: (None)

Abstain: (None)

Absent: (None)

Motion to Amend as follows was made by Hal Heiner and seconded by David Tandy.

- **90.06 ENFORCEMENT.**

- The Louisville Metro Health Department shall enforce the provisions of this subchapter through the issuance of citations, and for this purpose during times when employees are scheduled to work or the building or establishment is open to the public, may at all reasonable times enter in and on any that portion of the premises of any building or establishment where the public is invited or where employees perform their duties and take breaks, including but not limited to those areas where food and beverages, alcoholic or otherwise, are served, prepared or stored. Nothing herein shall be construed to prevent any peace officer with jurisdiction from issuing a citation for a violation of this subchapter committed in his or her presence. Notice of the provisions of this subchapter shall be given by Metro Government to all applicants for a business or other license.

The amendment passed.

VOTING RESULTS: For: 5; Against: 0; Abstain: 0; Absent: 0

For: David Tandy, Vicki Welch, Hal Heiner, Robin Engel, Mary C. Woolridge

Against: (None)

Abstain: (None)

Absent: (None)

Motion to Amend as follows was made by Hal Heiner and seconded by Vicki Welch.

- **90.07 VIOLATIONS AND PENALTIES.**
- (A) (1) A ~~minimum~~ penalty of ~~no less than \$50 100 50 nor more than and a maximum penalty of \$100 250 100~~ for the first offense within a one-year period;
- (A) (2) A ~~minimum~~ penalty of ~~\$150 no less than \$250 150 nor more than and a maximum penalty fine of \$250 500 250~~ for the second offense within a one-year period; and
- (A) (3) A ~~minimum~~ penalty ~~fine~~ of ~~\$350 no less than \$500 \$350 and a maximum penalty of \$500 nor more than \$1,000 500~~ for the third and each subsequent offense within a one-year period.

The following was discussed:

- Return fines to original amounts
- Repeat offenders
- To be cited, an individual must be seen smoking, but the establishment can be cited for filled ashtrays because the establishment has let people smoke there
- Citations

The amendment passed.

VOTING RESULTS: For: 5; Against: 0; Abstain: 0; Absent: 0

For: David Tandy, Vicki Welch, Hal Heiner, Robin Engel, Mary C. Woolridge

Against: (None)

Abstain: (None)

Absent: (None)

The following discussed regarding 90.07 Violations and Penalties (C):

- Fines, Citations, Offences
 - Daily vs. hourly
 - Is a policy decision
 - Renegade groups
- Possible Floor Amendment

Motion to Amend as follows was made by Hal Heiner and seconded by David Tandy.

- **90.04 POSTING OF SIGNS; REMOVAL OF ASHTRAYS**
- (D) The requirements of this section do not apply to any exempt dwelling area.

The amendment passed.

VOTING RESULTS: For: 5; Against: 0; Abstain: 0; Absent: 0

For: David Tandy, Vicki Welch, Hal Heiner, Robin Engel, Mary C. Woolridge

Against: (None)

Abstain: (None)

Absent: (None)

90.98 - Severability was discussed as follows:

Motion to Amend as follows was made by Hal Heiner and seconded by David Tandy.

- The Committee wishes for section 90.98 - Severability to apply
- If the Court strikes any part of the ordinance then it is the Councils wish the rest of the Ordinance to apply

Motion to Amend as follows was made by Hal Heiner and seconded by Robin Engel.

- **90.02 DEFINITIONS.**
 - **ESTABLISHMENT.** An entity, endeavor or organization, including its owners, operators, directors, shareholders, partners, employees and possessions.

The amendment passed.

VOTING RESULTS: For: 5; Against: 0; Abstain: 0; Absent: 0

For: David Tandy, Vicki Welch, Hal Heiner, Robin Engel, Mary C. Woolridge

Against: (None)

Abstain: (None)

Absent: (None)

Pat Mulvihill, Assistant County Attorney went over suggested verbiage for 90.07 (C) and stated he would type it up and send it out so the Council could review it before the Council Meeting for a possible floor amendment.

The following was also discussed:

- Structures for outside smoking
 - non-porous - attempt to allow people who are trying to comply with the law
 - Overhead covering with screening
 - Tents with no sides
- Consideration of smokers also

CM Engel gave a letter to Clerk for the record ([attached](#)) regarding Bingos and the revenue lost. He stated the actual numbers will be available before Thursday.

The following was discussed:

- Bingos
 - Charities are loosing revenue
 - Revenue down by 40% to 50%
 - Kentucky Harvest Bingo has closed
- Needs Negative vs. positive impact of the smoking ordinance
- Is the smoking ban to get rid of smoking altogether or to protect people from second hand smoke
- Ventilation
 - Separate ventilation may be a possibility
 - Separate ventilation is considered an exemption
 - Per Dr. Troutman, Director of Public Health and Wellness, Public Health and Wellness and CDC's stand is that separate ventilation does not work

The Ordinance as amended was sent to **Old Business**.

VOTING RESULTS: For: 5; Against: 0; Abstain: 0; Absent: 0

For: David Tandy, Vicki Welch, Hal Heiner, Robin Engel, Mary C. Woolridge

Against: (None)

Abstain: (None)

Absent: (None)

Motion to Adjourn was made by CM Tandy.

Without objection the meeting adjourned at 3:00 p.m.

***NOTE: Items sent to the Consent Calendar or Old Business will be heard before the full Council at the January 10, 2008 Metro Council Meeting.**

KQG